**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**WRIT PETITION NO.475 OF 2007**

Dnyandeo Maruti More ...Petitioner
Versus
Santosh Purushottam Dhawad ...Respondent

Shri G.S.Godbole for the Petitioner.
Shri Surel S.Shah for the Respondent.

**CORAM : ABHAY S.OKA, J.**
**DATED : FEBRUARY 22, 2007.**

**P.C.:**

1. Heard the Advocates appearing for the parties. The Petitioner is the original Defendant and the Respondent is the original Plaintiff. The Respondent filed a suit for specific performance of an oral agreement of sale of the suit property. The said suit has been decreed. The Petitioner preferred an Appeal against the decree alongwith an Application for condonation of delay. By the impugned Judgment and Order dated 18th December, 2006, the said Application for condonation of delay has been rejected by the learned Adhoc Additional District Judge, Solapur. This is the order impugned in the present Petition filed under Article 227 of the Constitution of India. Shri Godbole appearing for the Petitioner submitted that in the Application for condonation of delay, averments were made to show the existence of sufficient cause. He

submitted that the impugned decree is an exparte decree and immediately after the Petitioner came to know about the decree, he preferred the Appeal alongwith Application for condonation of delay. He stated that in execution of the decree, the court commissioner has executed a Sale Deed in favour of the Respondent. He stated on instructions of the Petitioner that if the delay is condoned and the Appeal is ordered to be heard on merits, the Petitioner will not apply to the District court for stay of execution and operation of the impugned Judgment and Decree as the Petitioner has already sold the property in dispute in favour of a third party. He states that an affidavit of the Petitioner to that effect will be filed within a period of two weeks from today. Shri Shah appearing for the Respondent opposed the Petition by pointing out that the Petitioner has no interest in the property as he has already sold the property in favour of a third party who tried to raise obstruction in execution. He submitted that no sufficient cause is made out by the Petitioner.

2. I have considered the submissions. The case made out by the Petitioner in Application is that he became aware about the exparte decree on 25th April,

2005. The age of the Petitioner disclosed in the Application is 77 years. According to him, he is suffering from many diseases. After coming to know about the exparte decree, he applied for certified copy of the impugned Judgment and decree which was received on 12th August, 2005. According to his case, he could not immediately collect sufficient amount for payment of court fees. The Appeal alongwith Application for condonation of delay was filed on 09th September, 2005. Perusal of the Application for condonation of delay shows that there was sufficient explanation for delay of about ten months in preferring the Appeal. It is well settled position of law that while considering the Application under section 5 of the Limitation Act, 1963, the court has to adopt liberal approach. The Petitioner has suffered a decree for specific performance. Considering the averments made in the Application, in my view, sufficient cause was made out for condonation of delay. The learned Adhoc Additional District Judge ought to have been condoned delay subject to payment of costs. The statement made by the Petitioner through his Advocate that he will not apply for stay of execution of decree during the pendency of the Appeal is accepted.

3. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 18th December, 2006 is quashed and set aside and Civil Misc. Application No.260 of 2005 is allowed subject to the Petitioner paying costs of Rs.5,000/- to the Respondent within a period of eight weeks from today. Payment of costs will be condition precedent.

(ii) If the amount of costs is paid or deposited by the Petitioner within the stipulated time, the District Court will proceed with the Appeal in accordance with law.

**JUDGE**